In re:

Case No. 04-35350-GFK Chapter 7

Alan Robert Speetzen and Peggy Lynn Speetzen,

Debtor(s).

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

- TO: Debtor(s) and Attorney for Debtor(s); Michael J. Iannacone, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.
- 1. Wells Fargo Bank, N.A., a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.
- 2. The Court will hold a hearing on this motion at **10:30 am** on **Tuesday, October 19, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.
- 3. Any response to this motion must be filed and delivered not later than Thursday, October 14, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Friday, October 8, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
- 4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Bank, N.A. seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

- 5. The petition commencing this Chapter 7 case was filed on September 14, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.
- 6. Wells Fargo Bank, N.A. holds a valid, perfected interest in a 2001 Caban 1975, vehicle identification number 4YDT1972913022405 (the "Vehicle").
- 7. Copies of Wells Fargo Bank, N.A.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Bank, N.A.'s interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.
- 8. Payments due under the terms of the Contract for the months of June through August 2004 totaling \$860.34 plus late charges, have not been made by the Debtor(s).
- 9. The balance due under the Contract is \$9,311.71 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$5,980.00.
- 10. Wells Fargo Bank, N.A.'s interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Bank, N.A. does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.
- 11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Bank, N.A. with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Bank, N.A. to relief from the stay.
- 12. Wells Fargo Bank, N.A. requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, T. Brott, or some other

representative of Movant, will testify on behalf of Wells Fargo Bank, N.A..

14. This notice of motion and motion also serves as notice of default as may be required by

Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before

the hearing, Wells Fargo Bank, N.A. will repossess the Vehicle promptly upon the Court signing the

Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION

OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Bank, N.A. respectfully moves the Court for an order (i) modifying

the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Bank, N.A. to foreclose its interest in

the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal

Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and

equitable.

Dated: September 27, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt

Bradley J. Halberstadt (#215296)

Attorneys for Movant

430 Oak Grove Street, Ste. 200

Minneapolis, Minnesota 55403

(612) 870-4100

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In re:

Chapter 7 Case

Peggy L Speetzen & Alan R Speetzen,

Bky. No. 04-35350

Debtor(s).

Affidavit

I, Travis Brott, of Wells Fargo Bank, N.A., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

- 1. Wells Fargo Bank, N.A. has a security interest in the following (the "Collateral"):
- 2. \$9.311.71 is the outstanding balance under the contract.
- 3. \$860.34 is the amount of the existing delinquency under the contract.
- 4. \$5,980.00 is the fair market value of the Collateral.
- 5. No appropriate insurance has been verified.

Further your affiant sayeth not.

Dated:

9/24/2004

Travis Brott

Bankruptcy Specialist Wells Fargo Bank, N.A.

Subscribed and sworn to before me on September 24, 2004

Notary

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MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

SPEETZEN PEGGY LYNN

First Class U.S. Postage PAID Permit No. 171 St. Paul, MN

134 KINGSWOOD DRIVE RED WING MN 55066

01

CABA TR C1760R335 Make Model Tale NA D5/29/03 Security Date 4YDT1972913022405 NO

RT35014

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse side of this form for removing this lien.

18

WELLS FARGO BANK PO BOX 31557 BILLINGS MT 59107-1557

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In re:

Case No.04-35350-GFK Chapter 7

Alan Robert Speetzen and Peggy Lynn Speetzen,

Debtor(s).

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Wells Fargo Bank, N.A. submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Bank, N.A. holds a perfected interest in a 2001 Caban 1975 with a vehicle identification number 4YDT1972913022405 (the "Vehicle"). Payments due under the terms of the Contract for the months of June through August 2004 totaling \$860.34 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$9,311.71 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$5,980.00.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Bank, N.A. has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Bank, N.A. to relief from the stay. <u>United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd.</u> (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate

where no equity exists and the property is not necessary to an effective reorganization. In re Albany

Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$9,311.71 as of the

date hereof. The fair market value of the Vehicle is approximately \$5,980.00. Clearly, no appreciable

equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective

reorganization.

CONCLUSION

For all the reasons set forth herein, Wells Fargo Bank, N.A. is entitled to an order terminating the

automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance

with Minnesota law.

Dated: September 27, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt

Bradley J. Halberstadt (#215296) Attorneys for Movant 430 Oak Grove Street, Ste. 200

Minneapolis, Minnesota 55403

(612) 870-4100

In re:

Alan Robert Speetzen and Peggy Lynn Speetzen

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-35350-GFK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

.....

United States Trustee Suite 1015 300 South 4th Street Minneapolis, MN 55415 (Attorney for Debtor(s)) Kent D. Laugen 306 West Avenue Red Wing, MN 55066 (Trustee) Michael J. Iannacone 8687 Eagle Point Blvd. Lake Elmo, MN 55042

(Debtor(s)) Alan Robert Speetzen 23931 Cty Rd 10 Blvd No 2 Mazeppa, MN 55956

Peggy Lynn Speetzen 23931 Cty Rd 10 Blvd No 2 Mazeppa, MN 55956

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 27, 2004 Signed: /e/ Bradley J. Halberstadt

In re:	Case No. 04-35350-GFK
Alan Robert Speetzen and Peggy Lynn Speetzen, Debtor(s).	Chapter 7 ORDER GRANTING MOTION FOR RELIEF FROM STAY
The above-entitled matter came before the Court for	or hearing on Tuesday, October 19, 2004 on the
motion of Wells Fargo Bank, N.A. seeking relief from the	automatic stay of 11 U.S.C. §362.
Appearances were noted in the Court's record. Based upon	n the proceedings on said date, the statements of
counsel, and all of the files and records herein, the Court n	ow finds that cause exists entitling Wells Fargo
Bank, N.A. to the relief requested.	
NOW, THEREFORE, IT IS HEREBY ORDERED	that the automatic stay of 11 U.S.C. §362 is
immediately terminated as to Wells Fargo Bank, N.A., and	Wells Fargo Bank, N.A. is authorized to
foreclose its interest in the subject 2001 Caban 1975, vehic	ele identification number 4YDT1972913022405
in accordance with Minnesota law. Notwithstanding Fed I	R. Bankr. P. 4001(a)(3), this order is effective
immediately.	
Dated:	
Gregory F. K. United States	ishel Bankruptcy Judge